

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
BRIAN S. MILLER, JUDGE

DIVISION II

CACR06-642

March 14, 2007

REGINALD RICHARDSON
APPELLANT

v.

STATE OF ARKANSAS

APPELLEE

AN APPEAL FROM THE OUACHITA
COUNTY CIRCUIT COURT
[CR-05-98-4]

HONORABLE CAROL CRAFTON
ANTHONY, JUDGE

AFFIRMED

Appellant Reginald Richardson was convicted of possession of cocaine with intent to deliver, a Class Y felony. Because the offense was committed within 1000 feet of a public housing facility, Richardson's sentence was enhanced, pursuant to Ark. Code Ann. § 5-64-411 (Repl. 2005), and he was sentenced to serve a total of 360 months in the Arkansas Department of Correction. Richardson now asserts that the trial court erred when it denied his motion for directed verdict and when it failed to either declare a mistrial or issue a cautionary instruction. We affirm Richardson's conviction.

On April 14, 2005, Sergeant John Voss of the Camden Police Department was on patrol at the Fort Lookout Apartment Complex when he noticed a man, later identified as

Richardson, walking toward his patrol car. Sergeant Voss noticed that Richardson had a can of beer in his hand and it appeared that Richardson had just taken a drink or was about to take a drink. Upon seeing Sergeant Voss, Richardson placed the beer at his side and began walking in the opposite direction. Richardson then tossed the beer into the dumpster that he walked past. Sergeant Voss arrested Richardson for drinking in public and performed a search of Richardson's person. During the search, he recovered thirty-five rocks of cocaine, \$365 in cash, and a cell phone. The State Crime Lab later determined that Richardson possessed 11.8474 grams of cocaine.

Richardson was charged with possession of cocaine with intent to deliver and with distribution of cocaine near certain facilities. At his November 2, 2005, jury trial in the Ouachita County Circuit Court, Richardson admitted to being at the apartment complex and having the beer. He explained, however, that the cash he possessed was from his temporary job with Manpower. Richardson admitted to possessing cocaine but said that he was only making a delivery for a friend and was not selling it.

Richardson alleges that the trial court erred when it denied his motion for directed verdict. A motion for directed verdict is a challenge to the sufficiency of the evidence. *Saul v. State*, 92 Ark. App. 49, ___ S.W.3d ___ (2005). On appeal from a denial of a motion for directed verdict, the sufficiency of the evidence is tested to determine whether the verdict is supported by substantial evidence, direct or circumstantial. *Id.* Substantial evidence is that evidence which is of sufficient force and character to compel a conclusion one way or the

other beyond suspicion or conjecture. *Hutcheson v. State*, 92 Ark. App. 307, ___ S.W.3d ___ (2005). This court considers only the evidence supporting the guilty verdict, and the evidence is viewed in the light most favorable to the State. *Id.*

Richardson first asserts that there was no competent evidence that his possession of the crack cocaine was dispositive proof of his intent to distribute as opposed to the intent to consume. Richardson ignores the fact that he was in possession of 11.8 grams of cocaine. Possession of more than one gram of cocaine creates a rebuttable presumption that the person possessed the cocaine with the intent to deliver. Ark. Code Ann. § 5-64-401(d)(3)(A)(i) (Repl. 2005). During his trial, Richardson failed to rebut this presumption. Accordingly, we hold that substantial evidence supported Richardson's conviction for possession of cocaine with the intent to deliver and we affirm his conviction.

Richardson next argues that the charges against him were void on their face and should have been dropped because there was no evidence that he consumed alcohol in a public place. This argument is not preserved. Richardson failed to make this argument below and it is well settled that this court does not consider arguments raised for the first time on appeal. *See Simmons v. State*, ___ Ark. App. ___, ___ S.W.3d ___ (Apr. 19, 2006).

Finally, Richardson alleges that the trial court erred when it failed to declare a mistrial or issue a cautionary instruction to the jury. He asserts that:

The prosecutor engaged in substantial misconduct by deliberately demeaning defense witnesses before the jury on the basis of their cultural identity and economic status, and by misleading the jury in matters of fact and law, and the trial court was obligated to either declare a mistrial due to this conduct, or provide such cautionary instruction

as would insure a just and fair verdict.

This argument is not preserved for appellate review because Richardson did not object or move for a mistrial at the time of the prosecutor's alleged conduct. Consequently, Richardson waived any error that may have occurred. *See Nelson v. State*, 84 Ark. App. 373, 141 S.W.3d 900 (2004).

Affirmed.

VAUGHT and HEFFLEY, JJ., agree.